

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID HOWARD	:	CIVIL ACTION
	:	
v.	:	NO. 02-CV-3797
	:	
JOHN E. POTTER, Postmaster General	:	

ORDER

AND NOW, this _____ day of March, 2004, upon consideration of Defendant's Motion to Dismiss Count II of the Amended Complaint (docket no. 16), it is **ORDERED** that the Motion to Dismiss is **GRANTED** and that Count II of the Amended Complaint is **DISMISSED WITHOUT PREJUDICE** to Plaintiff's filing a Second Amended Complaint, within twenty (20) days of the date of this Order, stating, if in good faith he can do so, his claim that his union represented him in a manner that was "discriminatory, dishonest, arbitrary, or perfunctory." See DelCostello v. Int'l Bhd. of Teamsters, 462 U.S. 151, 164 (1983).¹

Should Plaintiff further amend his Complaint, he is directed to file a Second Amended Complaint in its entirety, including any exhibits that he wishes considered as a part thereof, whether included with his previous Complaints or not.²

¹ As it currently stands, Count II of the Amended Complaint does not sufficiently allege that the union breached its duty of fair representation, as required by DelCostello, supra, 462 U.S. at 164. In his responses to the Motion to Dismiss, Plaintiff directs the Court's attention to Exhibit G of his original Complaint, which was incorporated by reference into his Amended Complaint. He also directs the Court's attention to several other documents, some of which are attached and some of which are not. Nevertheless, as pleaded, the Amended Complaint does not sufficiently state this required element.

² Instead of amending his entire Complaint on the first occasion he was granted leave to do so, Plaintiff instead amended only one Count, which created inconsistency within the Complaint itself. For example, there are now two sets of paragraphs labeled ¶¶ 40-50 and the clause in Count II no longer incorporates all of the preceding paragraphs. For the sake of clarity, a single, coherent Second Amended Complaint, with all the exhibits the Court will need to

BY THE COURT:

BRUCE W. KAUFFMAN, J.

consider, whether otherwise-obtainable or not, would be preferable to piecemeal pleading.